

COOPERATIVE ROAD MAINTENANCE AGREEMENT

THIS COOPERATIVE ROAD MAINTENANCE AGREEMENT is entered into this 13th day of January, 2003, by and between STATE OF IDAHO, DEPARTMENT OF LANDS, hereinafter referred to as the "Cooperator," and the UNITED STATES OF AMERICA, Regions One and Four of the Forest Service, United States Department of Agriculture, hereinafter referred to as the "Government," under authority of the Act of June 30, 1914, 16 U.S.C. 498; the Act of April 24, 1950, 64 Stat. 83, 16 U.S.C. 572; the Act of October 13, 1964, 78 Stat. 1089, 16 U.S.C. 535-538; and 36 CFR 212.5 and 212.9.

WHEREAS, the parties hereto have exchanged easements and shared the cost for certain roads, under Road Right-of-Way Construction and Use Agreements, or similiar prior agreements, and,

WHEREAS, these easements envision the parties' performance of maintenance and required preservation of the roads for future use, and,

WHEREAS, it is mutually deemed necessary for the parties to make provisions for maintaining and apportioning the costs of maintenance of such roads.

NOW THEREFORE, in accordance with these premises and in consideration of the mutual benefits to be derived, the parties agree:

- a. That this agreement shall apply to all roads upon which the Government and the Cooperator have joint road use rights by virtue of easements exchanged under terms of a Road Right-of-Way Construction and Use Agreement, or similiar prior agreements, prior to or subsequent to this Agreement.
- b. That all such jointly owned roads shall be maintained to agreed upon maintenance levels in a timely manner to the standards of original construction or reconstruction or as otherwise agreed to in writing.
- c. That all such maintenance shall be performed and the costs apportioned between the parties in accordance with this Agreement, provided that nothing contained herein shall invalidate any current easement language.

Section I - Explanation of Terms

Road Maintenance - The performance of work activities needed to preserve or protect a roadway including surface, shoulders, roadside, structures, and such traffic-control devices as are necessary for its safe and efficient use to the standard provided through construction, the most recent reconstruction, or other condition as agreed.

Road Maintenance Level - The five road maintenance levels are as follows:

Level 1 - Assigned to intermittent service roads during the time they are closed to vehicular traffic. Basic custodial maintenance is performed to keep damage to adjacent

Level 2 - Assigned to roads open for use by high clearance vehicles. Passenger car traffic is not a consideration.

Level 3 - Assigned to roads open and maintained for travel by a prudent driver in a standard passenger car. User comfort and convenience are not considered priorities.

Level 4 - Assigned to roads that provide a moderate degree of user comfort and convenience at moderate travel speeds.

Level 5 - Assigned to roads that provide a high degree of user comfort and convenience.

Recurrent Maintenance - Work that is needed on a continuing basis with accomplishment annually or more frequently.

Deferred Maintenance - Work that is deferred 1 or more years until such time as the work is needed or can be economically or efficiently performed.

Traffic Generated Maintenance - Work, except repair of Major Damage, made necessary as a direct result of, or to minimize the effect of, use and wear by traffic.

Non-Traffic Generated Maintenance - Work made necessary as a direct result of normal weathering processes or uncontrollable influences that cannot be attributed to traffic use.

Major Damage - Damage resulting from:

- a. Natural causes that is not repairable by normal maintenance practices; considered in excess of that normally occurring for the area; and not anticipated or provided for in the Annual Maintenance Plan, or
- b. Road use that intentionally or unintentionally affects serviceability of the road or results in wear or damage in excess of that occurring in the area under normal operating conditions and procedures.

Restoration - Work necessary, to rebuild a road to its previously approved traffic service level due to damage caused by unusual natural events such as floods.

Equivalent Unit (EU) - An average light vehicle having four or more wheels such as a passenger car, pick-up truck, or recreational vehicle moving over a given point in either direction.

National Forest Traffic - The traffic generated by use of National Forest System lands and other lands, exclusive of Cooperator traffic.

Cooperator Traffic - The traffic generated by use of lands owned or controlled by the Cooperator except such traffic as is generated by non-commercial recreational use of Cooperator's lands.

Designated Representative - Person(s) or position(s) designated on Exhibits A and B attached hereto, with the authority to obligate the cooperating parties by signing documents related to this Agreement. Each party may revise its respective Exhibit by notifying the other party in writing.

Section II - Annual Maintenance Planning

A written Annual Maintenance Plan, consistent with the requirements, definitions, and information in this Agreement, will be prepared and executed by the respective designated representatives of the Cooperator and the Government. This plan shall be agreed upon by May 1 of each year (or such other appropriate date as may be mutually agreed upon) and shall cover all maintenance work performed or planned to be performed during the calendar year. If, for any reason, the plan is not agreed to on a timely basis, those issues not resolved shall be elevated to the next highest management level of both the Cooperator and the Government for resolution. Pending resolution by higher level management, all agreed upon portions of the Annual Maintenance Plan shall proceed accordingly so that needed maintenance work is not delayed.

In the event resolution cannot be reached, the Government or the Cooperator will exercise rights acquired or reserved under the road easements to ensure the needed work is accomplished. The Cooperator and the Government shall bear their proportionate cost for the work performed.

The Annual Maintenance Plan may contain or reference other requirements, definitions, maintenance specifications, materials and equipment rates, and information consistent with this agreement that the parties mutually deem necessary to effectively maintain the road system to the last agreed upon standard.

The parties will annually exchange a 5-year projection of activities when it is mutually deemed necessary to determine anticipated use for planning recurrent and deferred maintenance work on specific projects over a 5-year planning horizon. The Government shall consider such projections for the purpose of planning future maintenance under this agreement and, when requested by the Cooperator shall keep them confidential.

In the event a party finds it cannot perform its assignment outlined in the Annual Maintenance Plan, it shall notify the other party in writing so that alternate arrangements can be made.

In the event that one party is not performing its assigned work, the other party shall notify the responsible party in writing. The responsible party shall then make arrangements to correct the deficiencies. If this is not accomplished, the other party may complete the work. Cost records shall be adjusted to reflect credit for completed work.

Annual Maintenance Plan. The Annual Maintenance Plan will include the anticipated recurrent and deferred road maintenance work needed during the calendar year. It shall include a 5-year projection of deferred maintenance work envisioned on roads covered by this Agreement. The parties will consider the needs of all roads covered by this Agreement whether or not they are being or will be actively used during the plan period.

The parties may agree to include in the Annual Maintenance Plan other roads shared under the authority of FLPMA or FRTA.

The Annual Maintenance Plan will include, as a minimum, estimates of the following information:

Road number and segments or groups of roads;

Length in miles;

Planned maintenance, by traffic generated and non-traffic generated categories;

Shares of non-traffic generated work attributable to each party;

Shares of traffic generated work based on EU's attributable to each party;

Performance responsibility and credits for each party;

A summation of the total traffic and non-traffic generated maintenance obligation for each party for the year; and

For each jointly owned road or group of roads, an accounting of the cumulative traffic by each party since original construction/reconstruction or the most recent surface rock replacement or since all traffic generated deferred maintenance obligations were last reconciled and satisfied.

The above information will be estimated and documented at the annual cost share maintenance planning meeting and reconciled for actual work performed and road use at the yearend closeout for each calendar year.

Annual Maintenance Accounting. The yearend closeout of the Annual Maintenance Plan will be reconciled and documented in writing by the designated representatives. Excess balances for maintenance work performed during the plan period will be paid in cash, unless agreed otherwise by the designated representatives.

Section III - Basis for Sharing the Cost of Various Elements of Maintenance

The basis for sharing the maintenance of each individual road or group of roads shall be shown in the Annual Maintenance Plan. The following lists certain maintenance activities as traffic generated or non-traffic generated maintenance. Specific planning for maintenance may reveal that some of these activities can be interchanged between categories. Additional items may be included.

Traffic Generated

Surface Blading
Bridge Maintenance
Dust Abatement
Cattleguard clean out
Gate repair
Surface rock replacement
Asphalt maintenance
Striping

Non-Traffic Generated

Minor Culvert replacement (in kind)
Bridge replacement (in kind)
Minor Structure replacement
Brushing
Ditch cleaning
Signing
Slide Removal
Cattleguard replacement
Culvert cleaning
Revegetation

A. Traffic Generated Maintenance

All traffic generated maintenance shall be shared on the basis of proportionate use, calculated on the basis of the number of EU's assignable to each party determined in accordance with the following procedures:

1. Native and Gravel Surfaced Roads:

(a) Computations shall be based on local, or other applicable information, agreed to by both parties, from traffic generated maintenance studies and/or cost data.

(b) For those situations where applicable studies have not been completed but where traffic haul and vehicle classification data are available, computations shall be based on the following formula:

Number of EU's per MBF (gross or net measure as the parties agree) =

$$\frac{[(\text{loaded truck wt} + \text{empty truck wt} + \text{support vehicle wt}) / (\text{wt of EU vehicle})]}{(\text{MBF per loaded truck})}$$

All vehicle weights are gross measure and are based on vehicles representative of the local situation. The number of and the classification of support vehicles shall also be representative of the local situation.

The weight of the EU vehicle used above shall be used to convert the gross weight of other commercial use to equivalent units.

(c) Where neither (a) or (b) above apply, a factor of 5 EU's per MBF shall be used. A factor of 4,800 pounds shall be used to convert the gross weight of other commercial haul to EU's.

2. Paved and bituminous surface treated roads. On all paved and bituminous surface treated roads, each 1,000 board feet (gross measure) of logs hauled shall be equal to 20 equivalent units. This includes one round trip by a log truck and a support vehicle. A factor of 1,200 pounds shall be used to convert the total weight of other commercial use to equivalent units.

B. Non-Traffic Generated Maintenance

All non-traffic generated maintenance obligations will be assigned on the basis of each party's proportionate share of the total accumulated capital value of the road. Where no capital value records exist, each party's share shall be determined based upon the current method of calculating shares based upon each party's proportionate ownership of the tributary acres.

C. Major Damage

The cost of repairing major damage from natural causes will be shared in accordance with Section 10 of the standard Road Right-of-Way Construction and Use Agreement.

The cost of repairing major damage associated with road use or damage caused as a result of a party's failure to make timely repairs will be borne entirely by the party causing the damage.

There shall be no major damage caused by either the Cooperator or Government to a road that materially impacts the road's serviceability for use without agreement from all owners of the road.

D. Road Improvements Without Agreement

Whenever one party chooses to upgrade the standard of a jointly owned road without the other party's participation, the non-participating party's maintenance share will be based on costs attributable to road maintenance costs for the previously existing road standard.

Section IV - Methods of Fulfilling Maintenance Obligations

It is the intent of this agreement to permit flexibility by the parties to this agreement in selecting optional methods, mutually agreed to by the parties, of performing and financing maintenance work. Any of the following general options may be selected.

A. Recurrent Maintenance

Option 1 - Maintenance by One Party. By agreement in the Annual Maintenance Plan, one party may assume the responsibility for performing all recurrent maintenance. The other party or parties will provide their proportionate share in cash. If the Government is the performing party, the Cooperator will deposit with the Government, in advance of the work to be performed, sufficient moneys in one or more payments to cover its share of the cost of the work.

If the Cooperator is the performing party, the Government will reimburse, or require its users to reimburse, the Cooperator in a timely manner for the Government share of the cost.

The final accounting will be based on the Annual Maintenance Plan adjusted as necessary for changes in the actual work performed at agreed to rates or changes in actual use of the road as compared to projected use, or actual costs if adequate records are available. Any surpluses or deficiencies will be reconciled in the annual accounting.

Option 2 - Maintenance by Both Parties. By agreement in the Annual Maintenance Plan, both parties may perform some portion of the required work listed in the plan. Substantial imbalances in a party's share of the work to be performed will be adjusted by either offsetting credits, cash settlement, or a revision of the Annual Maintenance Plan; provided that changes in planned work performance shall first be agreed to by the parties.

The final accounting will be based on the Annual Maintenance Plan adjusted as necessary for changes in the actual work performed at agreed to rates or changes in actual use of the roads as compared to projected use or by actual costs if adequate records are available. Any surpluses or deficiencies will be reconciled in the annual accounting.

B. Deferred Maintenance

Option 1 - Payment by the Cooperator to the Government for its share of the estimated cost of the mutually agreed to maintenance work as use occurs. Payment will be based on computed rates listed in the Annual Maintenance Plan. Such payments shall fully satisfy all accrued obligations of the Cooperator for the agreed to deferred maintenance work.

Option 2 - Payment by either party for its share of the cost of the work at the time the work is to be performed. Costs to be shared will be determined by the lowest acceptable bid or the joint engineer's estimate. Any agreed to contract modification affecting costs will be shared by both parties on the same basis.

When the Government is the performing party, the Cooperator will deposit with the Government its share of the cost of the lowest acceptable bid or the joint engineer's estimate in advance of contract award or performance. When the Cooperator is the performing party, the Government will reimburse the Cooperator in a timely manner for the Government's share, as work is accomplished by the Cooperator and accepted by the Government. Progressive, partial payments may be made by the Government as work is completed and accepted by the parties.

Option 3 - Performance of deferred maintenance by either or both parties without interim payment or transfer of funds between parties. When planned work, costs, and shares of each party are agreed to in advance of work performance, a party performing work in excess of its share will be credited by the other party and balances paid in cash following the annual accounting unless otherwise agreed.

Credits for deferred maintenance performed can be used to offset any other agreed maintenance costs. These credits will be in writing and included in the annual accounting.

Section V - Special Clauses

A. No member of, or delegate to, Congress or resident Commissioner shall be admitted to any part or share of this agreement, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this agreement if made with a corporation for its general benefit.

B. In performance of work, the Cooperator agrees to comply with the provision "EQUAL OPPORTUNITY (FAR 52.222-26) (APR 1984)," incorporated here by reference. In this form, contractor means Cooperator; and contracting officer or contracting agency means Government.

C. Nothing herein shall be construed as obligating the Government or the State to expend and/or involve the Government in any contract or other obligation for future payment of money in excess of appropriations authorized by law and administratively allocated for this work.

D. Deposits made or credits earned in favor of the Government under terms of this Agreement may include charges for necessary overhead expenses that are identified in advance by the Government in the Annual Maintenance Plan. Reimbursements made or credits earned in favor of the Cooperator under terms of this Agreement may include charges for necessary overhead expenses that are identified in advance by the Cooperator in the Annual Maintenance Plan.

Section VI - Terminations, Amendments, Modifications, Change of Ownership

A. This agreement may be terminated by any party upon at least ninety (90) days prior written notice, except that such termination shall in no way affect obligations incurred under this agreement until an agreed to settlement is made.


B. The terms and conditions of this Agreement may be modified or amended by signatory parties to the extent needed to meet the requirements of the parties. Such modifications and amendments will not be effective until agreed upon in writing.

C. In the event that either party conveys tributary lands and applicable easements for jointly owned roads to a new owner, it is understood and agreed that any outstanding road maintenance obligations as of the date of conveyance attributable to such lands are to be satisfied between the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this COOPERATIVE Road Maintenance Agreement in duplicate originals on the date first hereinabove written.

STATE OF IDAHO,
DEPARTMENT OF LANDS

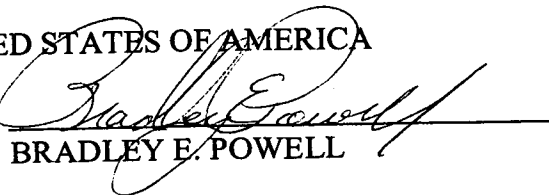
By


WINSTON A. WIGGINS

Title Director, Idaho Department of Lands

UNITED STATES OF AMERICA

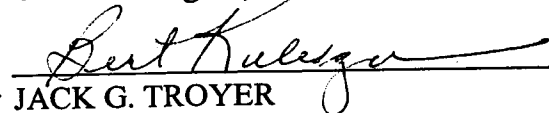
By


BRADLEY E. POWELL

Title Regional Forester
Northern Region, Forest Service


Department of Agriculture

By


JACK G. TROYER

Title Regional Forester
Intermountain Region, Forest Service

Department of Agriculture

THE AUTHORITY AND FORMAT OF THIS INSTRUMENT HAS BEEN REVIEWED AND APPROVED FOR SIGNATURE	
 AGREEMENTS COORDINATOR	1/22/03 DATE